burden by the legislature without compensation,[13] and it is not perceived how it can be important that the new use is kindred to the old one if in fact it imposes a heavier burden. And if the new use imposes no greater burden on the land than the old one it would seem that compensation need not be made whether the new use be kindred to the old one or not.

REVISION OF ALIMONY DECREES. — Cases resulting in decrees for the payment of alimony form no exception to the general principle that what is once adjudicated is not to be retried.[1] Hence, in the absence of express reservation of the power to modify,[2] the decree conclusively determines the proper allowance under the then existing conditions and a revision can proceed, if at all, only on new facts.[3] Upon proper allegations of the changed circumstances of the parties, revision is ordinarily allowed in cases of divorce *a mensa et thoro* [4] and in cases where alimony is granted without divorce.[5] For in such cases the basis of the decree is merely the common-law right of the wife to support,[6] the pecuniary value of which must necessarily vary with the circumstances of the parties. In absolute divorce, however, the marriage relation is terminated and the property rights incidental to it are destroyed.[7] In such cases some courts have reasoned that the basis of the decree is not only the right to support, but also the loss of these property rights as to which the adjudication must be final,[8] unless there is a statute [9] expressly providing for a revision, or a reservation in the decree itself.[10] A few other jurisdictions reach the same result on the doctrine, which would seem to be untenable, that the general rule forbidding the alteration of decrees applies to decrees for alimony even where there has been a substantial change in the circum-

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[13] State *v.* Laverack, 34 N. J. L. 201.

[1] Petersine *v.* Thomas, 28 Oh. St. 596; Fischli *v.* Fischli, 1 Blackf. (Ind.) 360. Of course, a decree for alimony, like other decrees, is subject to modification for fraud or mistake. Senter *v.* Senter, 70 Cal. 619, 11 Pac. 782; Gray *v.* Gray, 83 Mo. 106.

[2] In some states it is more or less the practice to make this reservation in the decree. See 2 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, § 875. Sometimes also the court orders a mere nominal alimony for the time being. See Lewsen *v.* Shotwell, 27 Miss. 630. These decrees, it has been urged, should not be construed as settling what the court intended they should not settle. See 2 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, § 875.

[3] Parker *v.* Parker, 61 Ill. 369; Blythe *v.* Blythe, 25 Ia. 266.

[4] Saunders *v.* Saunders, 1 Sw. & Tr. 72; Rogers *v.* Vines, 6 Ired. (N. C.) 293.

[5] Anonymous, 1 Desauss. Eq. (S. C.) 112; Beck *v.* Beck, 43 N. J. Eq. 668.

[6] Garland *v.* Garland, 50 Miss. 694; Trotter *v.* Trotter, 77 Ill. 510. Some courts, however, disregard this reason when they award alimony in marriages void *ab initio*. Strode *v.* Strode, 3 Bush (Ky.) 227. *Contra*, 34 W. Va. 524. In such cases there should be relief in tort. See 22 HARV. L. REV. 307.

[7] See Barrett *v.* Failing, 111 U. S. 523, 525, 4 Sup. Ct. 598. See 2 NELSON, MARRIAGE, DIVORCE, AND SEPARATION, § 903. *Cf.* 16 HARV. L. REV. 521.

[8] Petersine *v.* Thomas, *supra*. See 2 NELSON, MARRIAGE, DIVORCE, AND SEPARATION, §§ 903, 933 *a*.

[9] Such statutes exist in Ark., Colo., Ga., Ill., Ia., Ky., Me., Mass., Mich., Minn., Miss., Mo., Neb., N. H., S. D., Vt., Wis. In some states revision is denied under a statute. Kerr *v.* Kerr, 59 How. Pr. (N. Y.) 255; Park *v.* Park, 18 Hun (N. Y.) 466.

[10] There is an intimation that perhaps the terms of a decree of alimony may operate to *exclude* any future modification. See Hyde *v.* Hyde, 4 Sw. & Tr. 80, 81.

stances of the parties.[11] The weight of authority, however, is to the effect that even in cases of absolute divorce the decree can be reopened.[12] It is correctly pointed out that the decree is not intended as a final disposition of the property, but merely as an enforcement of the right to support; [13] and that the rule relating to the finality of decrees is inapplicable to it, as to all decrees calling for action in the future.[14]

In jurisdictions allowing such revision, the question arises whether the same rule should obtain when the decree has incorporated an agreement of the parties. Such a question is, of course, purely academic in those few states which still insist that any agreement of the parties during the pendency of a divorce suit must be entirely disregarded by the court as against public policy in tending to facilitate divorce.[15] Where the incorporation of such an agreement is allowed, the mere incorporation is sometimes held sufficient to eliminate the possibility of revision.[16] Other courts deny revision on the more rational ground that such incorporation constitutes a recognition of it by the court and makes it binding, provided the married woman had capacity to contract.[17] The soundest view, however, has been adopted, it would seem, by those courts which declare that the decree is not an enforcement of the agreement, but the court's own disposition of the question, which renders it subject to the court's ordinary power of modification.[18] A recent Maryland case, while subscribing to this view, denies revision, nevertheless, on the ground that the agreement incorporated in the decree obviously undertook to give the wife something more than alimony. *Emerson* v. *Emerson*, 45 Chic. Leg. N. 122 (Circ. Ct. of Baltimore City). This refinement, however, would seem to be untenable. For, if the agreement is effective not as an agreement but as part of a decree, the intention of the parties becomes immaterial. Even if the court attempted to produce the same result as that intended by the parties, this decree, like all other decrees for alimony, necessarily includes a provision for support. Therefore since it is to be carried out in the future, it should be subject to the general principles justifying modification of such decrees.

ACTUAL COMPETITION AS AN ESSENTIAL ELEMENT IN UNFAIR TRADE CASES. — In modern times as trade has become more intricate the de-

[11] Walker *v.* Walker, 155 N. Y. 77, 49 N. E. 633; Kamp *v.* Kamp, *supra*.

[12] Stevens *v.* Stevens, 31 Colo. 188, 72 Pac. 1060; Barbaras *v.* Barbaras, 88 Minn. 105, 92 N. W. 522.

[13] Tolman *v.* Leonard, 6 App.Cas. (D. C.) 224, 233. See PHELPS, JURIDICAL EQUITY, § 84.

[14] Keogh *v.* Pittston & Scranton St. Ry. Co., 195 Pa. St. 131; Township of Erin *v.* Detroit & Erin Plank-Road Co., 115 Mich. 465.

[15] Cross *v.* Cross, 58 N. H. 373; Wilson *v.* Wilson, 40 Ia. 230.

[16] Law *v.* Law, 64 Oh. St. 369, 60 N. E. 560. See Olney *v.* Watts, 43 Oh. St. 499, 502, 3 N. E. 354, 356.

[17] Martin *v.* Martin, 65 Ia. 255, 21 N. W. 595; Henderson *v.* Henderson, 37 Or. 141, 60 Pac. 597. On this line of reasoning it has been suggested that, following the analogy of separation agreements, it should be binding even though the wife had no capacity. See 21 HARV. L. REV. 146.

[18] Southworth *v.* Treadwell, 168 Mass. 511; Storey *v.* Storey, 125 Ill. 608.